IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

INCOME TAX APPEAL NO.266 OF 2002

The Chief Commissioner of Income Tax
Mumbai City-XVI, Mumbai. Appellant
vs.
Dr. Balkrishna Gidithuri, Mumbai Respondent

Mr. K. R.Chaudhary with Mr. Vijay Kantharia i/b. Mr. H. D. Rathod for the appellant.

Mr. K. Shivram i/b. Mr. K. Gopal for the respondent.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ

DATED : 16th August 2004

P.C.

Heard.

2. In this appeal, the following substantial questions

of law have been proposed:

"1. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the sum of Rs. 1 crore received by the assessee for having surrendered tenancy right is not in the nature of casual and non-recurring receipt u/s. 10(3) of the Act, 1961?

2. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the sum of Rs. 1 crore received by the assessee for having surrendered a tenancy rights is also not taxable under the head Other sources u/s. 56 of the Act?

3. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the interest levied u/s. 234A, B & C of the Income Tax Act, 1961?

4. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding the decision of Hon'ble Supreme Court in the case of Ranchi Club Ltd. was applicable in the case of assessee especially when amendment had been carried out to Section 234B of the Income Tax Act with retrospective effect by Finance Act, 2001?"

3. The learned counsel for the revenue fairly conceded that in view of the judgement in the case of Cadell Weaving Mill Co. Pvt. Ltd. v. Commissioner of Income-tax, 249 ITR 265, proposed question (1) stands concluded against the revenue in so far as this Court is concerned. He, however, submitted that special leave petition against said judgment is pending before the Supreme Court.

4. As regards proposed questions (2) to (4), the learned counsel for the revenue fairly stated that they are consequential to the decision on question (1).

5. Since the controversy raised by the revenue in proposed question (1) is concluded by the Division Bench judgment of this Court in the case referred above, from our point of view, the said question cannot be said to be substantial question of law. As regards the other

proposed question nos. (2) to (4), they are admittedly incidental and consequential upon the proposed question (1) and proposed question (1) stands answered against the revenue, the said questions cannot be said to be substantial questions of law.

6. Appeal, therefore, does not deserve to be admitted and is dismissed.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)